

In Re:

Case No.: 09-23716-MKN
Chapter 13

FRANCES HUERTA

Hearing Date: OST REQUESTED
Hearing Time: OST REQUESTED

Debtor(s).

**MOTION TO VACATE ORDER VACATING THE AUTOMATIC STAY AS TO
U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE UNDER POOLING AND
SERVICING AGREEMENT DATED AS OF DECEMBER 1, 2006, MASTR ASSET
BACKED SECURITIES TRUST 2006-HE5 MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2006-HE5**

FRANCES HUERTA, Debtor, by and through her attorney of record, Boris Avramski, Esq., from Avramski Law, PC, and move the Court pursuant to Rule 9024 of the Bankruptcy Rules and Rule 60 of the Federal Rules of Civil Procedure for an order to VACATE THE ORDER VACATING THE AUTOMATIC STAY AS TO U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF DECEMBER 1, 2006, MASTR ASSET BACKED SECURITIES TRUST 2006-HE5 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-HE5 (hereinafter “US BANK”) entered by the Court in the above matter.



1 Dated this 5th day of January, 2010.

2 Respectfully submitted.

3 /s/BORIS AVRAMSKI, ESQ.

4 Boris Avramski, Esq.

5 Attorney for debtor

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POINTS AND AUTHORITIES

THE COURT MAY RELIEVE A PARTY FROM AN ORDER DUE TO MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLIGENCE.

Pursuant to Bankruptcy Rule 9024, FRCP 60(b) applies where a party requests relief from judgment or order entered by the Bankruptcy Court. FRCP 60(b) states that “[o]n motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect...”

STATEMENT OF FACTS

1. Debtor filed the instant Chapter 13, Case Number 09-23716, on July 30, 2009.
2. On or about October 9, 2009, US BANK filed a motion to vacate the automatic stay as to debtor's primary residence located at 4617 Alta Dr., Las Vegas, NV 89107.
3. On November 25, 2009, a hearing was held on US BANK's Motion for relief from the automatic stay and same motion was granted by the Court.
4. The pre-petition arrears and the post-petition August, 2009, and September, 2009, payments to HOMEQ SERVICING, servicer for US BANK are included in the Amended Chapter 13 Plan Number 2. (See Amended BK Plan Number 2 attached hereto as Exhibit “1”).
5. Debtors have provided proof of post-petition payments for October, 2009, and November, 2009. (See Proof of Mortgage Payments attached hereto as Exhibit “2”).
6. Debtors advised counsel that Debtors can immediately tender the December, 2009, mortgage payment to HOMEQ SERVICING, servicer for US BANK if the Court reimposes the stay as requested herein.

WHEREFORE, the Debtors now request that Your Honor:

1. Vacate the Order Vacating the Automatic Stay as to US BANK;
2. Reinstate the automatic as to US BANK;
3. Compel US BANK to accept future payments from the Debtors;
4. Compel US BANK to provide an accounting of how all post-petition payments made by the Debtors have been applied since the instant Chapter 13 filing;

